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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 423

GOVERNMENT AND CIVIC EMPLOYEES ORGANIZING Committee, CIO, an Unincorporated Association; E. J. HABSHEY, *Appellants,*

vs.

S. F. WINDSOR, FELIX L. PARSONS, HARRELL HAMMONDS, KNOX McRAE, CLARENCE V. EVANS, and MELVIN DAWKINS, *Appellees.*

Appeal from the United States District Court for the Northern District of Alabama, Southern Division.

BRIEF ON BEHALF OF APPELLEES

* * *

STATEMENT OF THE CASE

On October 7, 1953, appellants sought an injunction and declaratory judgment against enforcement of Act No. 720, General and Local Acts of Alabama 1953, page 974, known as the "Solomon Act." It was alleged that the act violated the Fourteenth Amendment of the Constitution of the United States. The Solomon Act became effective September 17, 1953, and provides as follows:

"AN ACT

"To provide that any public employee who joins or participates in a labor union or labor organization shall forfeit all rights afforded him

under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment.

"Be it Enacted by the Legislature of Alabama:

"Section 1. As used in this act the term 'labor union or labor organization' means any organization of any kind, in which employees participate for the purpose of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and the term 'public employee' means any person whose compensation is derived in whole or in part from the State, or any agency, board, bureau, commission or institution thereof.

"Section 2. Any public employee who joins or participates in a labor union or labor organization, or who remains a member of, or continues to participate in, a labor union or labor organization thirty days after the effective date of this act, shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and other rights, benefits, or privileges which he enjoys as a result of his public employment.

"Section 3. This act shall not apply to persons employed as teachers by any county or city board of education or trade schools or institutions of higher learning, nor shall it apply to those employees of the State Docks Board referred to in Title 38, Section 17 of the Code of

Alabama, 1940, nor shall it apply to employees of cities or counties.

"Section 4. Any public employee who prior to the passage of this act or to his public employment belonged to a labor union or labor organization and as a result thereof has acquired insurance benefits or any other financial benefits may continue to participate in such labor union or labor organization to the extent that he shall not lose any benefits thus acquired.

"Section 5. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not effect the part which remains.

"Section 6. All laws or parts of laws which conflict with this act are repealed.

"Section 7. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

"Approved September 17, 1953.

Time 3:39 P.M."

On October 15, 1953, appellees filed their motion to dismiss and without waiving same also filed their answer.

Thereafter, on October 27, 1953, the cause was heard by a three judge court and on November 9, 1953, final relief was denied, but the cause was retained for a reasonable time to permit exhaustion of such state administrative and judicial remedies as may be available. In its opinion, the court stated:

> "The Solomon Bill concerns an important area of State administration and proclaims a broad legislative policy as to such administration. As to employees working for the State, there can hardly be any dispute that the settlement of grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work are matters for the State government to be performed through its legislative and executive departments, and are not matters for collective bargaining to be participated in by a labor union or labor organization. Section 1 of the act defines 'labor union or labor organization,' and, as so defined, the Act could well be construed by the state courts simply as prohibiting a public employee from being a member of or participating in such an organization for the purpose of collective bargaining with the State, and, as so construed, meet the challenge of unconstitutionality." 116 F. Supp. 354.

The three judge district court therefore applied the doctrine of abstention. On appeal, the judgment of the district court was affirmed by this court. See 347 U. S. 901.

Alone and without appellant Habshey, the appellant union thereafter filed a bill in the Circuit Court of Montgomery County, Alabama, in Equity, in which it sought to have the court declare and decree that it was not a labor union or labor organization within the meaning of the Solomon Act. (Rec. p. 72)

After a hearing on the merits, the Circuit Court, on April 12, 1954, declared and decreed that the

Solomon Act applied to complainant, its activities and its members. (Rec. p. 144) An appeal from the judgment was taken to the Supreme Court of Alabama, and, on March 10, 1956, said Supreme Court affirmed the judgment of the lower court. See 262 Ala. 285, 78 So. 2d 646. (Rec. p. 57)

The appellants, both of them, then moved the district court to proceed to dispose of the litigation in that court on its merits, and to decide the constitutional questions raised by the bill of complaint, said motion reciting that the Supreme Court of Alabama had construed the Solomon Act as applying to appellant union. (Rec. p. 56)

After a hearing in the district court in which the entire record before the Supreme Court of Alabama, upon which it based its decision, was introduced in evidence, the district court, in a per curiam opinion said:

> "As indicated, we have heretofore decided that the Solomon Bill can be so construed as to meet the challenge of unconstitutionality, and our said decision has been affirmed by the Supreme Court of the United States. **After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama Courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the state courts will ever so construe said statute.**" (Rec. p. 67, 68; emphasis supplied) 146 F. Supp. 214.

The cause was then dismissed with prejudice. (Rec. p. 68, 69) It is from this judgment of dismissal that the present appeal is being taken.

It is to be noted at this point that appellant union did not file an application for rehearing before the Supreme Court of Alabama, nor did it seek to have said court's judgment reversed by the Supreme Court of the United States.

STATEMENT OF CLAIMS AND CONTENTIONS

Appellant union is a labor union, and an unincorporated association, having its principal office in Washington, D. C. It is an affiliate of the Congress of Industrial Organizations and is engaged in organizing and recruiting members among, and the representation of civilian employees employed by public bodies and by social agencies, public or private. (Rec. p. 2)

Appellant Habshey is a clerk in a retail liquor store operated by the Alabama Alcoholic Beverage Control Board. (Rec. p. 10)

The appellee, Windsor, is District Store Supervisor for the Alabama Alcoholic Beverage Control Board charged with the general supervision of the liquor store, among others, in which appellant Habshey is employed. (Rec. p. 10, 29) Appellee, Felix L. Parsons, is manager at the store in which Habshey works. (Rec. p. 10)

The other appellees are the administrator and members of the Alabama Alcoholic Beverage Control Board. (Rec. p. 64)

Appellants claim that as a result of the passage of the Solomon Act and the Board's threat to enforce same, some two hundred and fifty (250) members of the union, who paid two dollars per month dues, withdrew from the union. (Rec. p. 92) Appellant Habshey did not withdraw and he, and one other possibly, are now the only employees of the A.B.C. Board who are still members of appellant union. (Rec. p. 100)

Appellants claim further that the union attempted to bargain collectively with the A.B.C. Board prior to the passage of the Solomon Act but were refused, the A.B.C. Board stating that they couldn't engage in bargaining with the union (Rec. p. 88); that thereafter they did not assert the right to strike against the Board and adopted the Board's decision not to bargain and ceased attempts to bargain collectively with the Board; that the union became more or less a discussion group, discussing public issues of the day, political issues, Federal Social Security or Public Housing Acts, and the benefits under those acts. They discussed anything having to do with the well being of people, anything which was economical, political or otherwise. (Rec. p. 88, 89)

Appellees claim that the rules of the appellant union and the Constitution of Congress of Industrial Organizations, together with the statement of President Philip Murray, in establishing appellant committee show beyond question that appellant union exists for the very purpose of collective bargaining (Rec. p. 101, 112, 118); that each member of the union takes an oath to observe the rules of appellant committee (Rec. p. 87); that recourse, under its rules, to any other action except settlement of dis-

putes by negotiations, conciliation, mediation and arbitration shall be taken only with written approval of the Executive Officers of GCEOC (Rec. p. 112, 124); that no written approval of the executive officers to do otherwise was ever obtained by appellant union, and the union and its members are duty bound by oath and the said constitution and rules to bargain collectively with their employer.

Appellees claim further that the testimony of James W. Battles, the only witness used by appellant union in the Montgomery County Circuit Court, tends to show that the union has not become a mere discussion group as claimed; that the activity of the union and its members shows that the members of appellant union were not giving their undivided allegiance to the State of Alabama.

Appellants contend that the Montgomery County Circuit Court and the Supreme Court of Alabama both held that the Solomon Act applies to a union whose members have agreed not to strike and not to bargain collectively with the State of Alabama. and who have in reality become a discussion group. Hence, they contend that the Solomon Act so construed violates the Fourteenth Amendment of the Constitution of the United States.

Appellees contend that the Montgomery County Circuit Court and the Supreme Court of Alabama both found that appellant union and its members had not become merely a discussion group, but under its rules and the constitution of CIO, and the testimony of James W. Battles, the union exists and its members participate therein for the purpose of collective bargaining with the State. Hence, there is

no constitutional objection in applying the Solomon Act to appellants under the ruling of the district court, which was affirmed by this Court in 347 U. S. 901.

Appellees contend further that neither the District Court nor the Circuit Court of Montgomery County nor the Supreme Court of Alabama has ever construed the Solomon Act as applying to a so called discussion group.

QUESTIONS PRESENTED

1. There is no constitutional question presented by this appeal which has not already been decided by the Supreme Court of the United States in affirming the judgment of the district court in this very case.

2. Was the district court correct in dismissing the action?

ARGUMENT

I

The district court decided that the Solomon Act can be so construed as to meet the challenge of unconstitutionality. It applied the doctrine of abstention for a reasonable time to permit a construction of the act by the state courts. The Supreme Court of the United States affirmed the district court. 347 U. S. 901.

The district court pointed out, in its opinion, that the state courts could well construe the Solomon Act

as simply prohibiting a public employee from being a member of or participating in an organization for the purpose of collective bargaining with the state. If so construed, under the law of this case as already decided, the act is constitutional. Any other construction of that which has been decided to date by the district court and the Supreme Court of the United States would render futile and meaningless the actions of those courts.

If the Solomon Act is applied to a union whose members participate therein for the purpose of collective bargaining with the state such application is constitutional. The Supreme Court of Alabama stated the matter as follows:

> "We think it entirely clear that the provisions of the Solomon Bill have application to a local union sponsored and operated according to the terms and provisions of the rules of the Committee and the Constitution of the Organization. Public employees, as defined in the Solomon Bill, who become members of such an operated local union are subject to the penalties therein provided." 262 Ala. 285, 78 So. 2d 646.

In establishing appellant union, Philip Murray wrote:

> "This committee is authorized and directed to proceed with the organization of employees in federal, state, county, municipal and related governmental agencies. The committee shall undertake to represent and defend the interests of these employees in the **realm of collective bargaining** and legislative matters in such man-

ner as to afford them the protection and improvement to which they are entitled." (Emphasis supplied; Rec. p. 101)

The rules of the Committee provide:

"Collective Bargaining

"Section 1. The policy of GCEOC shall be to resolve any dispute between employees and employers by **negotiations,** conciliation, meditation or arbitration. **Recourse to any other action shall be taken only with written approval of the Executive Officers of GCEOC."** Emphasis supplied; Rec. p. 112, 113)

The Constitution of Congress of Industrial Organizations provides, under the heading "Objects," the following:

"Second. **To extend the benefits of collective bargaining** and to secure for the workers means to establish peaceful relations with their employers, by forming labor unions capable of dealing with modern aggregates of industry and finance." (Emphasis supplied; Rec. p. 118)

The Constitution of CIO also provides:

"The Executive Board shall have the power to investigate any situation involving an affiliate on the ground that such affiliate is conducting its affairs and activities contrary to the provisions of the Constitution, and to make recommendations to the affiliate involved and to make a report to the convention." (Rec. p. 124)

The Bill of Complaint filed by appellant union in the Montgomery County Circuit Court alleges:

> "Complainant exists and its members participate in complainant for the purpose, among other things, **of dealing with such employers** concerning grievances, labor disputes, wages, rates of pay, hours of employment, conditions of work, and other related matters in order to improve, **by negotiation,** the conditions of employment for and the quality of service rendered by such employers as to affect such improvement by legislation, or other legitimate means." (Emphasis supplied; Rec. p. 73, 98)

To the question to the witness Battles, "That is true, is it not?" he replied, "Yes, sir." (Rec. p. 98)

The witness James W. Battles identified himself as being the National Representative of the CIO attached to the Government and Civic Employees Organizing Committee. (Rec. p. 87) Also, that he was a staff representative assigned to the union. (Rec. p. 96)

The witness Battles also testified as follows:

> "Q. One of the main purposes of your local union is to bargain collectively with employers; isn't that one of the main purposes?
>
> "A. I would say that is one of the purposes, yes sir.
>
> "Q. In other words, you believe in united

strength, where a large number of you get together you can bring about better working conditions, and better working hours and rates of pay, where you collectively go to an employer and bargain with him?"

"A. Yes sir.

"Q. And you do use in instances where you feel justified a strike to bring about the enforcement of what you think is a legitimate request?

"A. Yes, sir.

"Q. And your organization has done that, hasn't it?

"A. Yes sir.

"Q. And I believe you stated that before the passage of the Solomon Act you did attempt, or your members did attempt, or your officers, or who had this bargaining duty, did attempt to bring about collective bargaining with the Alcoholic Beverage Control Board, or its administrators?

"A. Yes, sir.

"Q. Were you told at that time by Mr. McRae, or Mr. Thames, that it was the policy of the State it could not bargain collectively?

"A. Yes, sir, told by Mr. McRae.

"Q. You did attempt collective bargaining with them?

"A. Yes, sir.

"Q. And they took the position they couldn't do that?

"A. Yes, sir.

"Q. After the passage of the Solomon Act did you attempt to bargain collectively with them in any way?

"A. Only to the extent we asked them if the act applied to us." (Rec. p. 97, 98)

It was the above line of evidence which brought about the following from the Supreme Court of Alabama: (262 Ala. 285; 78 So. 2d 646)

> "The constitution, rules and by-laws of a labor union or labor organization are the source of its authority. They constitute the contract between the labor union and its members, as well as the contract between members of the union. **Alabama State Federation of Labor v. McAdory,** 246 Ala. 1, 18 So. 2d 810. The statement of Battles to the effect that 'we' abandoned the usual procedures pursued by labor organizations to accomplish their purposes is in irreconcilable conflict with the declared purpose and object of the organization and of the committee. The record before us fails to show any authority whatsoever whereby a local union on its own volition or upon the mere advice of a representative of the organization may abandon the declared purposes and objects of the parent organization. Such attempt to change the pur-

pose of the local union appears to be subversive and prohibited by the constitution and laws of the national organization. **Congress of Industrial Organizations v. City of Dallas,** Tex. Civ. App., 198 S. W. 2d 143; **Perez v. Board of Police Com'rs. of City of Los Angeles,** 78 Cal. App. 2d 638, 178 P. 2d 537."

This is but saying that the union exists and the members participate therein for the purposes for which the union was organized; that one of its main purposes is collective bargaining; that collective bargaining is constitutionally prohibited by the Solomon Act.

What else could have led to the district court's opinion that, "It is clear to us that the Alabama Courts have not construed the Solomon Bill in such manner as to render it unconstitutional, and, of course, we cannot assume that the state courts will ever so construe said statute." Rec. p. 67, 68)

So we say there is no constitutional question presented in this case, for the district court has already decided that the Solomon Act, if construed to prohibit collective bargaining with the State, is constitutional, and, this decision has been affirmed by this Court.

Moreover, there are parts of Battles' testimony which do not support his statement to the effect that after the board refused to negotiate, the Alabama local union became a mere discussion group.

The following transpired during the examination of Battles:

"Q. You said when you couldn't get collective bargaining you resorted to other means that were legitimate. What do you mean by resorting to other means legitimate, **toward having the wages raised?**

"A. I see what you mean, I went there with a group of employees before the Personnel Board after that, and we did settle quite a few grievances which they had." (Emphasis supplied, Rec. p. 90)

Then there is the testimony of Battles on direct examination that the union "is not anyway in the world a labor organization within the meaning of the Bill, and the law does not apply to us." But on cross-examination, he testified that when the Solomon Bill was introduced in the Legislature he thought it might be applicable to the employee members of the union and contacted legislators and other unions in an effort to defeat the Bill. (Rec. p. 93, 96, 97)

And then again Battles testified that they did discuss a bill they were contemplating sponsoring in the Legislature to provide for collective bargaining for state employees. (Rec. p. 91)

House Joint Resolution No. 638, General Acts of Alabama 1939, page 1004, which is still in effect, declared the public policy of the State of Alabama with reference to state employees joining unions. This resolution stated that, ". . . the effort to organize state employees . . . is viewed with grave concern and disfavor by this Legislature . . . ,"

The above testimony of Battles not only tends to

show that the union is not a mere discussion group as claimed, but that the union and the state employee members thereof have engaged in sponsoring collective bargaining legislation for state employees and have attempted to defeat legislation which prohibits collective bargaining. As individuals the constitutional right is there, but as state employees it is not. Such action is contrary to the declared public policy of the State of Alabama.

II

THE SOLOMON ACT IS CONSTITUTIONAL

The conditioning of public employment upon nonmembership in labor unions has been frequently upheld by the courts. Most of the decided cases involve municipal ordinances but in them, as here, the same contentions of unconstitutionality under the Fourteenth Amendment have been made and overruled. So far as the constitutional issues are concerned, there would seem to be no difference whether the legislation in question is a State statute or a municipal ordinance.

The courts have advanced several reasons in denying the right of public employees to engage in union activities. The public employer is a sovereign; the government is established by and run for all of the people and not for the benefit of any person or group; the profit system is missing in public employment; public employees owe undivided allegiance to public employer; continuing operation of public employment is indispensable in the public interest. (A thorough annotation of this subject appears in 31 A. L. R. 2d 1142-1180.)

The Supreme Court of Alabama has written to this question in the case of **Hickman v. City of Mobile,** 256 Ala. 141, 53 So. 2d 752. The justices were agreed in spite of contentions that appellants were being deprived of constitutional rights, that it lay within the power of a municipality to prohibit membership of policemen and firemen in labor unions. The Court stated:

> " . . . under such charter provisions such governing boards may refuse employment and prohibit the service of any one or all such employees who are members of labor organizations, which are not only national but international in scope and purpose and therefore their organization being opposed to and the direct antithesis of the basic purposes of local self government for which cities and towns in Alabama are established. This power is essential to the preservation of the character and life of such municipalities." (Numerous leading cases are cited in the opinion to sustain the above holding.)

It is the almost unanimous determination by all courts which have passed on the question that public workers are in a class apart from workers in private industry and may be fobidden, upon penalty of dismissal, from participating in labor unions.

In the case of **C. I. O. v. Dallas,** 198 S.W. 2d 143 (Tex. Civ. App.), the Texas Court upheld an ordinance prohibiting, upon penalty of dismissal, **all** city employees from organizing or becoming members of labor unions. The same constitutional objections suggested in this case were there p r e s e n t e d.

The court held that the rights and privileges granted by the Federal Constitution were personal and could be waived and that by accepting employment with the city, the appellants did waive them to the extent that they were inconsistent with their duties as city employees.

This same principle has been enunciated in many other cases. An analogous situation is that of statutory restrictions upon the political activities of public employees. Here also such restrictions have been upheld in the face of attack on constitutional grounds as interference with freedom of speech or personal liberty. **McAuliffe v. Mayor of New Bedford**, 155 Mass. 216, 29 N.E. 517; **United Public Workers v. Mitchell**, 330 U.S. 75.

Analogous also is the case of **Alder v. Board of Education of New York**, 342 U.S. 485, involving the constitutionality of the Feinberg Law, a New York statute providing for the disqualification and removal of teachers and employees in the public schools who advocate the overthrow of the Government by unlawful means or who are members of organizations which have a like purpose. In upholding the Act, the court stated:

> "It is clear that such persons have the right under our law to assemble, speak, think and believe as they will. **Communications Assn. v. Douds**, 339 U.S. 382. It is equally clear that they have no right to work for the state in the school system on their own terms. **United Public Workers v. Mitchell**, 330 U.S. 75. They may work for the school system upon the reasonable terms laid down by the proper authorities of New

> York. If they do not choose to work on such terms, they are at liberty to retain their beliefs and associations and go elsewhere. Has the State thus deprived them of any right to free speech? We think not. . . ."

The controlling principle in all of these cases is that public employment necessitates a surrender of certain civil rights to a limited extent because of a dominant public interest in the unimpeded functions of government.

This was expressed aptly by Murray, J., in **Railway Mail Ass'n. v. Murphy**, 180 Misc. 868, 44 N.Y.S. 2d 601:

> "To tolerate or recognize any combination of civil service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages and conditions under which they will carry on the essential services vital to the welfare, safety and security of the citizens. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous.

Appellants seek to draw a distinction between the cases involving firemen and policemen and the

case here involving a state employee in a state operated liquor store. This argument stems from **Carter v. Thompson**, 164 Va. 312, 180 S.E. 410, 412, where it is said that police and fire departments are in a class apart. We might ask, what about employees working for the State Insane Hospitals?

There may be a difference in degree between certain types of employment, but all owe undivided allegiance to the State when employed by it, and so long as human nature is what it is, a man cannot serve two masters. Here the appellant Habshey has, by his oath, given his allegiance to and subjected himself to the control of appellart union, an organization distinct from the State of Alabama and national in its scope.

The real distinction is that which exists between private employment and public employment, not in the fact that one is a policeman or a fireman.

There have been at least four cases which have reached the Supreme Court of the United States under similar factual situations with the exception that they involved firemen and policemen. In each case there was alleged a violation of the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution, and none of said cases discloses a violation of any constitutional rights.

The most important, which is adverse to appellants, is **King v. Priest**, 357 Mo. 68, 206 S.W. (2d) 547, appeal dismissed 333 U.S. 852, rehearing denied 333 U.S. 878. In the **Priest case**, the union claimed to be a non-striking union and agreed that

collective bargaining was not a proper union practice with regard to public employees. Every constitutional question attempted to be raised in this case was raised in that case. This Court dismissed an appeal from the Supreme Court of Missouri stating, "The appeal is dismissed for want of a substantial Federal question."

The other cases are, **State Lodge of Michigan, Fraternal Order of Police v. City of Detroit,** 318 Mich 182. 27 N.W. (2d) 612, certiorari denied, 332 U.S. 818; **City of Jackson v. McLeod,** 199 Miss. 676, 24 So. (2d) 319, certiorari denied, 328 U.S. 863; **Fraternal Order of Police v. Harris,** 306 Mich. 68, 10 N.W. (2d) 310, certiorari denied, 321 U.S. 784.

THE SOLOMON ACT MAKES NO UNLAWFUL DISCRIMINATION.

The Solomon Act does not unconstitutionally discriminate against appellants or either of them. If it did the district court would have so declared. Instead, the court found that the State Courts could well construe the act in such a manner as to meet the constitutional objections raised and then applied the doctrine of abstention. If this had not been correct, this Court would not have affirmed the district court.

There is nothing in the provisions of the Fourteenth Amendment to prevent the states from reasonable classification of subjects for legislative action. **Farmers Irrig. Dist. v. Nebraska ex rel. O'Shea,** 244 U.S. 325.

The Legislature is not bound in order to support

the constitution or validity of its regulation to extend it to all cases to which it might possibly reach but, dealing with practical exigences it may be guided by experience and is free to recognize degrees of harm and confine its restrictions to those classes of cases where the need is deemed to be the clearest. **Miller v. Wilson**, 236 U.S. 373; **Williamson v. Lee Optical of Oklahoma, Inc.**, 348 U.S. 483.

It seems to us that the act exempts three categories of public employees from its provisions—teachers, certain railway employees of the State Docks Board (referred to in Title 38, Section 17, Code of Alabama 1940), cities and counties.

This classification and exception are entirely reasonable and are matters within the discretion of the Legislature. **Day-Brite Lighting, Inc. v. Missouri**, 342 U.S. 421.

The exception of the act's application to employees of the State Docks Board, who are subject to the Railway Labor Act, is fully sustained by **Alabama State Federation of Labor v. McAdory**, 325 U.S. 471; 246 Ala. 1, 18 So. 2d 810.

In the **McAdory case**, the Supreme Court of Alabama said:

> "Argument is advanced also that the Act is invalid because of a capricious discrimination, in that it expressly excludes organizations coming within the influence of the Act of Congress known as the Railway Labor Act, as amended, 45 U.S.C.A. §§ 151-188. But a study of that Act, to which we gave attention in **Steele v. L.**

> **& N. R. Co.**, 16 So. 2d 416, will disclose that it was the intent of Congress, in large part if not entirely, to pre-empt the field covered by the salient features of the statute."

It therefore clearly appears not only from what has already been decided in this case by the district court and affirmed by this Court, but by the cases hereinabove cited, that the Solomon Act does not unlawfully discriminate against appellants.

CONCLUSION

Finally, we desire to point out that the district court on November 9, 1953, retained this cause for a reasonable time to permit appellants to exhaust such state administrative and judicial remedies as may be available. The appellant Habshey has never pursued his remedy in the State Courts and has sought no construction of the Solomon Act in said courts. Over two years is more than a reasonable time within which he could have done so. He, therefore, cannot complain of the court's action in dismissing the case on February 17, 1956.

We desire to point out also as to appellant union that this Court has held:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondent may, therefore, maintain this suit." **Hague v. Committee for Industrial Organization**, 307 U.S. at page 514.

And again in said case at page 527:

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by § 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial persons."

The district court was correct in dismissing the action and its judgment should be affirmed.

Respectfully submitted,

JOHN PATTERSON
Attorney General of Alabama

GORDON MADISON
Assistant Attorney General of Alabama

COUNSEL FOR APPELLEES

I, Gordon Madison, one of the attorneys for appellees, herein, hereby certify that on 8th day of April 1957, I served copies of the foregoing brief on the appellants by mailing copies in duly addressed envelopes, with first class postage prepaid, to each of their attorneys of record.

Gordon Madison

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